

IN THE HIGH COURT OF TANZANIA

(MWANZA REGISTRY)

AT MWANZA

CRIMINAL SESSIONS CASE NO. 23 OF 2019

THE REPUBLICPROSECUTOR

VERSUS

GRACE D/O BONIPHACE..... ACCUSED

SENTENCING

The accused person Grace d/o Boniphace stood charged with the offence of manslaughter contrary to section 195 and 198 of the Penal Code, Cap 16 [R.E 2019]. And she pleaded guilty to the lesser offence and so has been convicted on her own plea.

Initially, the accused was arraigned for offence of murder c/s 196 and 197 of the Penal Code, Cap 16 [R.E 2019] however, the prosecution accepted a plea of lesser offence.

It is a principle of law in sentencing the accused person based on the fact that she pleaded guilty and convicted on her own plea that is one among the factors in which the court may take into consideration. The other factors are the previous criminal records, the time spent by the accused in remand pending trial, the age of the accused as well as the circumstances in which the offence was committed.

In our present case, the accused had readily pleaded guilty as to the offence of manslaughter and more so she is the first offender as correctly

submitted by Ms. Rehema Mbuya, the learned senior state attorney who join hands with the advocate of the accused that, the accused is a first offender. Furthermore both counsels agreed that at the time of the commission of the offence, the accused was below 18 years of age. These are the factors that I will consider when passing sentence.

The learned advocate of the accused submitted that if the accused was charged and convicted at the time of the commission of the offence, being a child by that time, the appropriate sentence ought to be in accordance to section 119 of the law of the child Act, Cap 13 R.E 2019 in which the punishment could be either conditional discharge, repatriation order, fine, compensation or committal to the approved school.

The accused age at the time of commission of the offence to my opinion need to be considered in passing sentence. In the case of **Batekeye Bulinjie vs Republic** criminal Appeal No. 151 of 1990, CAT at Mwanza (unreported) the court took note of the offenders age at the time of the commission of the crime and not at the time of sentencing. Also in the case of **Joseph Lazaro & 2 others V Republic**, Criminal Appeal No. 118 of 2014 (unreported) the Court observed that the sentence of imprisonment meted against the child was illegal.

In our case at hand the accused spent a considerable time in remand pending trial as submitted by the learned advocate that the accused spent 5 years and 6 months. Staying in remand is a mitigating factor that ought to

be considered as was precisely demonstrated in **Mathias s/o Masala v the Republic**, criminal appeal No. 274 of 2009.

Thus, much as what she did was inhumane and irresponsible act, I believe that by pleading guilty and being the first offender, take into consideration that at the time of the commission of the offence she was below the age of majority, that is 18 years and the time spent in custody, she is remorseful and she had learnt a lesson. I therefore discharged her unconditionally believing that she shall become good standing citizen to the society.

It is so ordered.



Sgd. M. Mnyukwa

Judge

15/09/2021

Right of appeal against sentence explained and guaranteed.



M. Mnyukwa

Judge

15/09/2021